Part II - Compliance Reviews

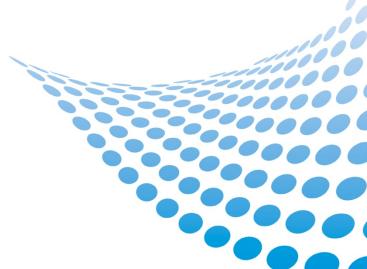


Recommended Practices for a Complete and Compliant ACDBE Concession Agreement File

Office Of Civil Rights

ACHIEVING SAFETY THROUGH DIVERSITY

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Purpose and Outcome

- Assist airport staff in the effective implementation of the ACDBE Program
- Present information to airport staff on effective documentation of implementation
- Provide airport staff with a better understanding on how to be prepared for a compliance review

Why Does FAA Conduct Program Compliance Reviews?

- Ensure contract compliance
- Provide technical assistance
- Share and note recommended practices
- Identify national trends
- Identify areas for improvement

Elements of a Review

- Administrative Requirements
- Solicitation Processing and Concession Contract Reviews
- Monitoring Post Contract Award
- ACDBE Participation Reporting

Administrative Requirements

ACDBE Program

ACDBE Program should be:

- Up to date
- Signed, the policy statement
- Disseminated to relevant parties in your organization
- Implemented as written, including:
 - Solicitation/Contract Language
 - Enforcement Mechanisms



ACDBE Program

- ACDBE Liaison Officer Duties
- Independent Direct Access to CEO
- Measures for ensuring nondiscrimination
- Compliance and enforcement procedures
- Monitoring and enforcement mechanisms
- Responsive or Responsibility
- Mentor-Protégé Programs

ACDBE Goals

- Approved three-year goal/methodology
 - For ACDBE, separate goals for car rental v. other concessions
- Implementation of race-neutral (RN)/raceconscious (RC) methods
 - Contract goals are race-conscious
- Tailored concession contract goals
- Monitor progress towards goals
- New concessions opportunity
- Update as necessary



Other Administrative Requirements - ACDBE

- Direct Ownership Arrangements
 - Excludes Car-Rental Concessions
- Long-Term Exclusives
- Complaints/Complaint Procedures

Solicitation Processing and Concession Contract Reviews

Documentation Pre-Solicitation

- Goal Determination
 - NAICS code analysis
 - RC v RN determination
- Outreach Plan
 - Available firms
 - Certification
 - Technical assistance

Documentation Solicitation – RC Goal

- ACDBE Goal
- Good Faith Efforts (GFE) Requirements
- ACDBE Information Submission Requirements
- Required Contract Provisions

Documentation Solicitation – Race Neutral

 Language stating that requirements of regulation apply, for example:

The requirements of 49 CFR part 23 apply to this contract. It is the policy of ______ to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. _____ encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

- Cannot include a contract goal
- Contract must include assurance of 23.9

Documentation

- Solicitation Cannot include:
 - Geographic preferences
 - Quotas or set-asides
 - Group-specific goals (without FAA waiver)
 - Minority or Women Business Enterprise goals based on a local program
- Written Certification that all records have been reviewed

Documentation Pre-Award – RC Goal

- Determination if goal is met
- Determination of Good Faith Efforts, if required
 - Good Faith Efforts Documentation, ONLY if goal was not met
 - Administrative Reconsideration
- Contract Review, including Joint Venture (JV) Agreements

Documentation Pre-Award – RC Goal

- Contract Review
- Goal Commitment
- Termination/Substitution
- Joint Venture Agreements

Monitoring Post Contract Award

Documentation

Subconcession/Joint Venture Review

- ALL subconcessions (subcontracts)
 - Nondiscrimination language
 - 23.9(c) for ACDBE
- Written certification

ACDBE Joint Venture Review

- Reviewed in accordance with:
 - 49 CFR Part 23
 - Joint Venture Guidance 2008
- Distinct, clearly defined portion of the work
- Capital, contribution, control, management, risks, and profits
- Written approval
- Written certification

Oversight/Monitoring

Oversight/Monitoring:

Every contract with ACDBE participation

Monitoring must consist of:

- Detailed process
- Confirmation that the work committed to an ACDBE is performed by the ACDBE

Monitoring must include:

- Commercially Useful Function (CUF) review/Worksite visit
- Review of subcontracts, joint ventures, or other arrangements
- Site visit observations
- Written certification



Oversight/Counting

- Counting (23.53 & 23.55)
- Commercially Useful Function

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

Monitoring

- Every ACDBE on every contract
- Required records
- Commercially Useful Function documentation
- Written certification
- Preamble to the 2011 Final Rule

Monitoring Procedures

- Tailored to the type of ACDBE participation
- Subcontracts
- Joint Ventures
- Management Contracts
- Suppliers
- Brokers

Monitoring Documentation

- Commercially Useful Function Review
- Site Visit
- ACDBE Subcontract/Joint Venture Document or Purchase Agreements
- Job Site Visit
- Forms
- Written Certification

ACDBE Joint Venture Monitoring

- Capital Contributions
 - Loan activity (payments, new loans)
- Capital Account activity
- Distributions
- Reserves withheld
- Tax returns, including K1s
- Fee reconciliation

ACDBE Joint Venture Monitoring

- Operating or cash flow statements
- Management committee meeting schedule/minutes
- ACDBE activity reports
- Amendments to the JV agreement
- Changes in roles/responsibilities

Monitoring Participation

- Running tally of ACDBE participation
- List of participating ACDBE firms
- Follow-up on any anticipated shortfall
- Termination/substitution procedures (26.53)

Monitoring Documentation Close-Out

- Final accomplishment determination
- Monitoring cannot be performed solely at close-out
- Ensure contractual obligations are met, dissolution, liquidation, etc.
- Final written certification

ACDBE Participation Reporting

Counting/Reporting

- Proper counting of participation
- Gross receipts, Purchases, Payments
- Race Neutral/Race Conscious
- Shortfall Analysis and Corrective Actions

Contract Compliance File Contents Sample Compliance Checklist

Note: The Sample Compliance Checklist is **not** a U.S. DOT officially approved document and recipients are not required to use it.

- **♦** Solicitation Specs Review
 - Contract Goal (if Race Conscious)
 - Contract Language Requirements
 - Good Faith Efforts Requirement/Procedures



✓ Contract Review

- Nondiscrimination language 23.9(c)
- Contract goal, if applicable
- Termination/substitution language (26.53(f))

Written Certification

- Summary of findings
- Follow-up actions



Solicitation Review

- Verification of Submission of ACDBE List/Information
- Verification of NAICS codes
- GFE Review (only if goal is not met)
- Reconsideration, written decision



Findings of the Solicitation Review

Subcontract/Joint Venture Review



★ ALL Subcontract Agreements

- Nondiscrimination language (23.9(c))



ACDBE Subcontract must reflect type of work listed on the proposal document



Comparison to master concessions agreement



ACDBE Joint Ventures

Approved in accordance with JV Guidance





Additional Site Reviews



Other Records



 Running Tally of Actual ACDBE **Attainment**



Appropriate procedures used for any termination/substitution request



Written Certifications

- Records Reviewed
- Summary of Findings
- Follow-Up Actions

Sample Compliance Checklist Close-Out



Monitor All Commitments

Monitor Payments/Distributions



Summarize any Issues

Provide Final Certification

Recommendations

- Be Prepared
- Ensure Proper Records
- Keep Records Updated
- Relax
- Learning Opportunity

Questions?